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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,200	04/16/2004	Kazumi Totaka	723-1505	7673
23117	7590	10/27/2008	EXAMINER	
NIXON & VANDERHYE, PC			TORIMIRO, ADETOKUNBO OLUSEGUN	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	PAPER NUMBER
ARLINGTON, VA 22203			3714	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/825,200	TOTAKA ET AL.	
	Examiner	Art Unit	
	ADETOKUNBO O. TORIMIRO	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 July 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5-10 and 12-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5-10 and 12-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. The amendment received on 07/08/2008 has been considered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 7-10, and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowley (US 6,096,962) in view of Koguchi (US 5,148,419) and Shuster (US 6,270,409).

Re claims 1,8, and 9: Crowley teaches a game apparatus operable to execute a game BGM / *background music* generating program stored on a storage medium (**see col.2, lines 30-40**), said game apparatus comprising a phrase data storage area that stores different kinds of a plurality of phrase data, based on a musical characteristics (**see fig.2B; col.2, lines 48-51 and col.2, line 64-col.3, line 11**); a rhythm-pattern storage area (320) that stores at least one kind of rhythm pattern data, constructed of rhythm, wherein said phrase data designate a length in performance for performing a phrase, and a timing of said phrase (**see fig.1; col.3, lines 12-20 and col.12, lines 40-43**); BGM data reproducing programmed logic circuitry that reproduces BGM data constructed of at least one part; sound outputting programmed logic circuitry (500) that outputs a sound according to the BGM data reproduced by said BGM data reproducing programmed logic circuitry (**see fig.1B; col.2, lines 51-56**), wherein said game BGM generating program being executed by a processor (140) of said game apparatus to perform the steps of randomly

selecting one kind of the phrase data from one group stored in said phrase data storage area (**see col.4, lines 5-9**); selecting one rhythm data from one kind of the rhythm pattern data stored in said rhythm-pattern storage area according to a predetermined rule (**see col.12, lines 57-60**); and generating the BGM data from the phrase data selected by said randomly selecting one kind of the phrase and the rhythm data selected by said selecting one kind of rhythm data (**see col.2, lines 30-40**).

However, Crowley fails to teach a tone-color-data storage area that stores data of the sound output according to said BGM data; a continuous counter for counting the number of times the same phrase has been selected; including incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value.

Koguchi teaches a tone-color-data storage area that stores data of the sound output according to said BGM data (**see col.4, lines 65-68**).

Shuster teaches a continuous counter for counting the number of times the same phrase has been selected; including incrementing said continuous counter (21) when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value (**see fig.1; col.4, lines 14-39**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tone-color-data storage area that stores data of the sound output according to said BGM data since tone and musical sound data of Koguchi and the incrementing of continuous counter of Shuster into the BGM generating program of Crowley. One would be

motivated to do this so has to have a complete sound database and a system whereby there is a count of the amount of data selected from the database.

Re claim 2: Crowley teaches a storage medium that stores a game BGM / *background music* generating program (**see col.2, lines 30-40**), wherein said selecting one kind of rhythm includes randomly selecting the rhythm data from one kind of said rhythm pattern data (**see col.12, lines 40-43 and lines 57-60**).

Re claim 3: Crowley teaches a storage medium that stores a game BGM generating program, wherein said rhythm selecting step includes sequentially selecting the rhythm data from one kind of said rhythm pattern data in predetermined order (**see col.12, lines 57-60**).

Re claim 7: Crowley teaches a storage medium that stores a game BGM generating program, wherein said game apparatus further comprises a period designating data storage area that stores period designating data that designates a performing period / *play mode* and a performance suspended period / *don't play mode* of the phrase, said BGM data reproducing programmed logic circuitry suspends a reproduction of the BGM data in the performance suspended period based on said period designating data (**see fig.3; col.4, lines 39-47 and col.8, lines 39-42**), and allows said processor to execute the step of counting the performing period and the performance suspended period designated by said period designating data by the number of times the rhythm data has been selected (**see fig.3; col.9, lines 8-28**). It is apparent to examiner

that since there is a play mode present, there will be a mode also present for the don't play mode.

Re claim 10: Crowley teaches a method for generating a sequence of BGM, comprising the steps of: providing at least one set of rhythm data (**see fig.1; col.3, lines 12-20 and col.12, lines 40-43**), providing at least one set of phase data (**see fig.2B; col.2, lines 48-51 and col.2, line 64-col.3, line 11**), selecting a set of rhythm data from the at least one set of rhythm data (**see col.12, lines 40-43 and lines 57-60**), selecting a set of phase data from the at least one set of phase data (**see col.4, lines 5-9**), and generating BGM data from the selected rhythm data and the selected phase data (**see col.2, lines 30-40**).

However, Crowley fails to teach a continuous counter for counting the number of times the same phrase has been selected; including incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value.

Shuster teaches a continuous counter for counting the number of times the same phrase has been selected; including incrementing said continuous counter (21) when the phrase data selected last time and the phrase data selected this time agree and re-selecting the phrase data when a count value of said continuous counter is larger than a predetermined value (**see fig.1; col.4, lines 14-39**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the incrementing of continuous counter of Shuster into the BGM generating program of Crowley. One would be motivated to do this so has to have a complete

sound database and a system whereby there is a count of the amount of data selected from the database.

Re claims 12 and 13: Crowley teaches the method wherein the selecting a set of rhythm data includes randomly selecting a set of rhythm data; and wherein the selecting a set of rhythm data includes sequentially selecting a set of rhythm data (**see col.12, lines 40-43 and lines 57-60**).

Re claims 14-16: Crowley teaches the method wherein the selecting a set of phase data includes randomly selecting a set of phase data (**see col.3, lines 12-20**); wherein the selecting a one rhythm data includes randomly selecting a rhythm data; and wherein the selecting a one rhythm data includes sequentially selecting a rhythm data (**see col.12, lines 57-60**).

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crowley (US 6,096,962) in view of Koguchi (US 5,148,419) and Shuster (US 6,270,409) and further in view of Ishikawa et al (US 2001/0016510). The teachings of Crowley, Koguchi, and Shuster have been discussed above.

Re claim 5: Crowley teaches a storage medium that stores a game BGM generating program.

However, Crowley fails to teach a storage medium that stores a game BGM generating program wherein said game apparatus further comprises at least one operating control that inputs an operation from a player; and performance change data storage area that stores performance

change data that changes a performing method of a BGM and further is used by said processor in execution of the following steps, of storing performance change data corresponding to at least the operation of said performance change data storage area; and applying a predetermined change to said BGM data corresponding to the performance change data stored in said performance change data storage area by said storing performance change data.

Ishikawa et al teaches a storage medium that stores a game BGM generating program (**see par. [0002]**) wherein said game apparatus further comprises at least one operating control (32) that inputs an operation from a player (**see fig.1; par. [0011], lines 1-3**); and performance change data storage area that stores performance change data that changes a performing method of a BGM and further is used by said processor in execution of the following steps, of storing performance change data corresponding to at least the operation of said performance change data storage area; and applying a predetermined change to said BGM data corresponding to the performance change data stored in said performance change data storage area by said storing performance change data (**see par. [0012]**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an operating control for inputting operations and performance change data storage in the BGM generating program since games that utilizes BGM requires input from players in order for there to be change in the performance and hence performance change data and a storage area to store the performance change data so has to allow storage of performance change data, thereby making the game more interesting by allowing player input.

Re claim 6: Crowley teaches a storage medium that stores a game BGM generating program.

However, Crowley fails to teach a storage medium that stores a game BGM generating program wherein applying a predetermined change includes changing a tempo of said BGM data according to said performance change data.

Ishikawa et al teaches a storage medium that stores a game BGM generating program wherein applying a predetermined change includes changing a tempo of said BGM data according to said performance change data (**see par. [0017], lines 1-5]**).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a change in tempo of the BGM which a performance change data so as to increase the level of interaction between the player and the game thereby making the game more interesting and enjoyable for the player.

Response to Arguments

5. Applicant's arguments filed 07/08/2008 have been fully considered but they are not persuasive.

In response to applicant's argument that Shuster does not teach the limitation of "incrementing said continuous counter when the phrase data selected last time and the phrase data selected this time agree", the examiner disagrees. The examiner points out that the interpretation of the claims as written on phase data includes a non-winning combination. The examiner has interpreted the phrase data broadly as any condition that could cause the increment in the counter. Also when a winning combination occurs after a non-winning combination, it

resets the counter over again hence preparing the counter for a fresh increment to begin; hence every winning combination is a fresh start as taught by Shuster.

Further in response to the applicant's argument on the motivation employed in the office action, the examiner disagrees. The examiner points out that the counter is not counting the data in the database as argued by the applicant since it would be expected for a database to have a count record, but counting the data as used and selected from and for the database so as to know how many times a non-winning outcome has occurred as taught by Shuster. The non-winning outcome is the data being recorded by Shuster.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adetokunbo O. Torimiro whose telephone number is (571) 270-1345. The examiner can normally be reached on Mon-Fri (8am - 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/A. O. T./

Examiner, Art Unit 3714

/John M Hotaling II/

Supervisory Patent Examiner, Art Unit 3714